

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE DONALD E. ARMSTRONG,
Debtor.

BAP No. UT-02-011

DONALD E. ARMSTRONG,
Appellant,

Bankr. No. 00B-26592
Chapter 11

v.

KENNETH A. RUSHTON, Trustee;
STEPPE APARTMENTS, LTD.;
STEVEN R. BAILEY, Trustee; and
UNITED STATES TRUSTEE,
Appellees.

ORDER OF DISMISSAL
June 4, 2002

Before PUSATERI, BOHANON, and MICHAEL, Bankruptcy Judges.

On February 19, 2002, this Court entered an Order to Show Cause Why Appeal Should Not Be Dismissed for Lack of Jurisdiction (“OSC”), because the Appellant filed a Notice of Appeal more than 10 days after the entry of the order appealed. *See* Fed. R. Bankr. P. 8002(a). The Appellant timely responded to the OSC. Appellees Kenneth A. Rushton, Trustee, and Steppes Apartments, Ltd. filed responses to the Appellant’s response. The Appellant, in his Reply in Support of Response to Order to Show Cause on Jurisdiction filed on March 18, 2002, stated that he had filed a motion with the bankruptcy court requesting an extension of time in which to file a notice of appeal (“Rule 8002(c) Motion”). Based on that representation, on March 25, 2002, this Court entered an order staying this appeal pending resolution of the Rule 8002(c) Motion.

On April 19, 2002, the bankruptcy court entered an order denying the Rule

8002(c) Motion (“Rule 8002(c) Order”). The Appellant amended his notice of appeal in the instant appeal to include the Bankruptcy Court’s Rule 8002(c) Order.

On May 10, 2002, this Court concluded that the Rule 8002(c) Order could not be appealed through amending the notice of appeal in the instant case. The Court construed the amended notice of appeal as a new notice of appeal and stayed resolution of the instant appeal pending resolution of the new appeal.

On May 22, 2002, this Court entered an order dismissing the new appeal. The time for filing a motion for rehearing of that order has expired, and the Court’s mandate has issued in accordance with 10th Cir. BAP L.R. 8016-3.

Fed. R. Bankr. P. 8002(a) requires an appellant to file a notice of appeal within 10 days of the entry of the order appealed. In this case, the order appealed was entered on January 31, 2002, but the Appellant’s Notice of Appeal was not filed until February 12, 2002. Thus, the Appellant’s Notice of Appeal is not timely, and, absent an extension of the 10-day period by the Bankruptcy Court pursuant to Fed. R. Bankr. P. 8002(c), this Court lacks jurisdiction over the appeal. *Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997). Because the Bankruptcy Court did not extend the time for filing the Notice of Appeal, this Court lacks jurisdiction over the instant appeal.

Accordingly, it is HEREBY ORDERED that this appeal is DISMISSED.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By: 

Deputy Clerk